

SUPPORT FOR THE AMENDMENTS

Claims 1 and 9-12 are currently amended.

Claims 2, 3, and 5 were previously canceled.

Claim 8 is canceled herein.

The amendment of Claim 1 is supported by original Claims 1 and 8. The amendments of Claims 9-12 are supported by the corresponding claims as originally presented.

No new matter is believed to have been added.

REMARKS

Claims 1, 4, 6, 7, and 9-16 are pending in the present application.

The rejection of Claims 1, 4, 6, and 7 under 35 U.S.C. §102(b) over WO 03/002628 as disclosed in US 2004/0181008 is obviated by amendment.

Applicants make no statement with respect to the propriety of this ground of rejection and in no way acquiesce to the same. Solely to expedite examination, Applicants have amended Claim 1 to include the limitations of Claim 8, which the Examiner has recognized is not anticipated by WO 03/002628.

Applicants request withdrawal of this ground of rejection.

The rejection of Claims 1, 4, and 6-12 under 35 U.S.C. §103(a) over Itoh et al (US 7,074,472) in view of Turri (US 6,376,572) or WO 03/002628, are respectfully traversed.

Claims 1, 4, and 6-12 are neither disclosed nor suggested by Itoh et al in view of Turri or WO 03/002628 because both the present invention and the invention as described by Itoh et al were commonly owned at the time the present invention was made.

MPEP §706.02(l)(2) states:

"Applications and references (whether patents, patent applications, patent application publications, etc.) will be considered by the examiner to be owned by, or subject to an obligation of assignment to the same persons, at the time the invention was made, if the applicant(s) or an attorney or agent of record makes a statement to the effect that the application and the reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person."

An Assignment in the present application was recorded on February 19, 2008 at Reel No. 020528, Frames 0443-0446. The present invention and the invention as described by

Itoh et al were, at the time the present invention was made, owned by, or subject to an obligation of assignment to, the same person.

35 U.S.C. §103(c) states:

"Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."

Itoh et al is a reference that is, at best, available under 35 U.S.C. § 102(e). Since Applicants have properly established common ownership above, Applicants have removed Itoh et al as a possible reference under the above-mentioned provisions granted to Applicants by 35 U.S.C. §103(c) and MPEP §706.02(l)(2).

In view of the foregoing, the rejection over Itoh et al in view of Turri or WO 03/002628 is no longer tenable and should be withdrawn. Acknowledgement to this effect is requested.

Finally, with respect to the rejection of Claims 1, 4, and 6-12 over Claims 1-15 of Itoh et al (US 7,074,472) in view of Turri (US 6,376,572) or WO 03/002628 under the doctrine of obviousness-type double patenting is obviated by submission herewith of a Terminal Disclaimer over US 7,074,472. Applicants submit that the filing of the Terminal Disclaimer is purely to expedite allowance of the claimed invention and in no way indicates acquiescence to the Examiner's alleged rejection.


Withdrawal of these grounds of rejection is requested.

Applicants submit that the present application is now in condition for allowance.

Early notification of such action is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.  
Norman F. Oblon

A handwritten signature in black ink, appearing to read 'V. Shier', is written over the printed name of Vincent K. Shier.

Vincent K. Shier, Ph.D.  
Registration No. 50,552

Customer Number  
22850

Tel: (703) 413-3000  
Fax: (703) 413-2220  
(OSMMN 08/03)